

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MAURICE EMILE,)	
)	Civil Action No. 04 - 974
Plaintiff,)	
)	Judge Gary L. Lancaster /
v.)	Magistrate Judge Lisa Pupo Lenihan
)	
S.C.I. PITTSBURGH, and PA DEPT OF)	Doc. Nos. 31, 32
CORRECTIONS,)	
)	
Defendants.)	
)	

ORDER

On December 29, 2005, without first obtaining leave of court as required, Plaintiff filed a document entitled "Amendment to Civil Complaint 04-974." The Court allowed this Amended Complaint to be filed.

Presently before the Court is a Motion requesting yet another amendment to the Complaint filed by Plaintiff. (Doc. No. 31) The request is only to add a claim for "failure to protect." Plaintiff asks the Court to rule that he has made sufficient allegations to move forward at this time. The Court will not do that. There is a Motion to Dismiss pending, which Plaintiff has answered, and which the Court will address via a Report and Recommendation to the District Court. However, based upon the allegations in Plaintiff's Amended Complaint, he has stated a claim for "failure to protect" and the Court does not believe there is any need to amend to state those actual words. Filing yet another complaint at this point will serve no end other than to further confuse the claims presently before this Court.

Plaintiff filed a second motion (Doc. No. 32) asking the Court to order Defendants to "fill out a Martinez report" or to grant the Plaintiff a "Spears Hearing." A Martinez Report and a

Spears Hearing are methods utilized by courts in other jurisdictions and are not recognized by the Third Circuit. The Court will first decide the pending Motion to Dismiss, and if Plaintiff survives that motion, the Court will order appropriate discovery. Therefore,

IT IS HEREBY ORDERED this 27th day of March, 2006, that the Plaintiff's Motion to file a Second Amended Complaint is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff's Motion for a Martinez Report and/or a Spears Hearing is **DENIED**.

IT IS FURTHER ORDERED that in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(A), and Local Rule 72.1.3, the parties are allowed ten (10) days from the date of service to file an appeal from this order to the District Court. Failure to timely file an appeal may constitute a waiver of any appellate rights.



LISA PUPO LENIHAN
U.S. Magistrate Judge

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